

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket No. 006943.00310)

In the Application of:)	
)	
Lee, et al.)	
)	Examiner: Chawla, Jyoti
Serial No.: 10/628,420)	
)	Group Art Unit: 1794
Filing Date: July 29, 2003)	
)	Confirmation No. 6264
For: Method to improve the stability of)	
lemon/lime flavored beverages)	

**APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR
RECONSIDERATION UNDER 37 CFR 1.705(b)**

MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

1. This is a request for reconsideration of the patent term adjustment of 440 days indicated in the determination of Patent Term Adjustment under 35 U.S.C. 154(b) that was identified in the Issue Notification mailed April 3, 2009 for the above-referenced application. It is respectfully requested that Applicants be granted a minimum patent term adjustment of 675 days which includes the term to be added based on the sum of the number of days following the 14 Month Delay and the number of days following the Three Year Delay, minus the number of days of Applicant Delay for the above-referenced application.

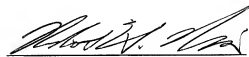
2. Applicants submit herewith a "Statement Under 37 CFR 1.705(b)(2)."

In accordance with 37 CFR 1.705(b)(1), please charge the fee set forth in 37 CFR 1.18(e) (\$200.00) to our Deposit Account No. 19-0733. Please charge any necessary additional fees or credit any overpayments to our Deposit Account No. 19-0733.

Respectfully submitted,
BANNER & WITCOFF, LTD.

Dated: June 16, 2009

By:

A handwritten signature in black ink, appearing to read "Robert H. Resis", written over a horizontal line.

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STATEMENT UNDER 37 CFR 1.705(b)(2)

MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

1. This statement is respectfully submitted in support of the "Application for Patent Term Adjustment Including Request for Reconsideration Under 37 CFR 1.705(b)" for the above-referenced application. In view of the following, it is respectfully requested that Applicants be granted a minimum patent term adjustment of 675 days.

2. The patent term adjustment on the Issue Notification is 440 days (a copy of the PTAS Sheet is submitted herewith as Exhibit A). This determination of 440 days is in error in that pursuant to 35 U.S.C. 154(b) the Office failed to take certain action within the time frame specified in 37 CFR 1.702(a) and failed to issue a patent within three years of the actual filing date of the above-referenced application in accordance with 37 CFR 1.702(b).

Pursuant to 37 CFR 1.703(a), Applicants are entitled to a period of patent term adjustment due to the failure by the Office to mail an action under 35 U.S.C. 132 not later than 14 months after the actual filing date (i.e., by September 29, 2004) (hereinafter "14 Month

Delay"). As the Office failed to mail an action under 35 U.S.C. 132 until March 27, 2006, Applicants are entitled to a period of patent term adjustment beginning on the day after the date that is 14 months after the date on which the above-referenced application was filed under 35 U.S.C. 111(a), i.e., September 29, 2004, and ending on the date of mailing of an action under 35 U.S.C. 132, i.e., March 27, 2006. Accordingly, the period of patent term adjustment due to the 14 Month Delay by the Office is 544 days, which is in agreement with the period calculated by the Office on the PTAS Sheet (Exhibit A, page 1).

In addition to the patent term adjustment due to the 14 Month Delay, pursuant to 37 CFR 1.703(b) Applicants are entitled to a period of patent term adjustment due to examination delay from the number of days in the period beginning on the day after the date that is three years after the date on which the above referenced application was filed under 35 U.S.C. 111(a), i.e., July 29, 2006, and ending on the date a patent will be issued, i.e., after the Notice of Allowance mailed April 3, 2009, but not including any time consumed by continued examination of the application under 35 U.S.C. 132(b), (hereinafter "Three Years Delay"). As the issue date will be after July 29, 2006, and there being a request for continued examination mailed March 21, 2007, Applicants have calculated a minimum period of Three Years Delay of 235 days based on the period of July 29, 2006 to March 21, 2007.

As set forth in 37 CFR 1.703(f), Applicants are entitled to a period of patent term adjustment equal to the period of examination delays based on the grounds set forth in 37 CFR 1.702 reduced by the period of time equal to the period of time during which Applicants failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR 1.704 (hereinafter "Applicant Delay"). With respect to the above-referenced application, the total period of examination delays is the sum of the period of 14 Month Delay (between September 29, 2004 and March 27, 2006), i.e., 544 days and the minimum period of Three Years Delay (235 days), or 779 days, to the extent these periods of delay are not overlapping. As the period of 14 Month Delay ended on March 27, 2006, prior to the first day of the period of Three Years Delay, i.e., July 29, 2006, Applicants submit that these periods are not overlapping. To calculate the period of patent term adjustment, the total period of examination delay is reduced by the period of Applicant Delay, which the USPTO has calculated as a period of 104 days (see Exhibit A).

Accordingly, Applicants submit that the correct patent term adjustment for the above-referenced application is at least **675 days**, which is the difference between the total period of examination delay (779 days) and the period of Applicant Delay (104 days). **As such, the correct patent term adjustment upon issuance of a patent is expected to be the sum of 675 days (as calculated herein).**

3. The factual bases for the above adjustment are set forth as follows:

A. Examination Delays Pursuant to 37 CFR 1.702 and 1.703

Pursuant to 37 CFR 1.703(f), the period of adjustment of the term of the patent under 1.702 is the sum of the periods of examination delay calculated under subparagraphs (a)-(e), to the extent that such periods are not overlapping, less the sum of the periods calculated under 1.704 (the period of Applicant Delay). In the above-referenced application, Applicants are entitled to a period of examination delay equal to the sum of the periods of delay under 1.703 (a) and (b) for the reasons set forth below.

i. "14 Month Delay" Pursuant to 1.703(a)(1)

In accordance 37 CFR 1.703(a)(1), Applicants are entitled to a period of patent term adjustment due to the failure by the Office to mail an action under 35 U.S.C 1.32 not later than 14 months after the actual filing date (i.e. September 29, 2004). As shown in the PTAS Sheet (Exhibit A, page 1), the Office failed to mail an action until March 27, 2006. As such, Applicants are entitled to a period of patent term adjustment beginning September 30, 2004 and ending on March 27, 2006, the date of mailing of the Non-Final Rejection by the Office. Accordingly, the period of patent term adjustment due to the 14 Month Delay by the Office is **544 days**, as is correctly shown on the PTAS Sheet (Exhibit A, page 1).

ii. "Three Years Delay" Pursuant to 37 CFR 1.703(b)

It is anticipated that the Office will not comply with the requirement of 35 U.S.C. 154(b) and 37 CFR 1.702(b), which requires issuance of a patent within 3 years after the date on which the application was filed under 35 U.S.C. 111(a). As shown in the Notice of Allowance mailed April 3, 2009, a patent will issue after April 3, 2009. Since a request for continued examination was filed March 21, 2007, said issue date would be more than 3 years and **235 days** (July 29,

2006 to March 21, 2007) after the above-referenced application was filed under 35 U.S.C. 111(a). As the exclusionary period set forth in 37 CFR 1.702(b) applies to the instant application due to the filing of a request for continued examination on March 21, 2007, and in accordance with 37 CFR 1.703, a minimum period of examination delay is calculated to be 235 days (beginning July 30, 2006 and ending March 21, 2007). Accordingly, the entire period of Three Years Delay is the minimum period of the number of days from July 30, 2006 to the day of filing of the request for continued examination on March 21, 2007, i.e., 235 days.

iii. Total Examination Delay Pursuant to 37 CFR 1.703(f)

As set forth in 37 CFR 1.703(f), the period of examination delay based on the grounds set forth in 37 CFR 1.702 is the sum of the period of 14 Month Delay (544 days) and the minimum period of Three Years Delay (235 days), or 779 days, to the extent these periods of delay are not overlapping. As the period of 14 Month Delay ended on March 27, 2006, prior to the first day of the period of Three Years Delay, i.e., July 30, 2006, Applicants submit that no days are overlapping.

B. "Applicant Delay" Pursuant to 37 CFR 1.704

Pursuant to 37 CFR 1.704 the period of adjustment of the term of the patent due to examination delay is reduced by the period of Applicant Delay. As indicated on the PTAS Sheet (Exhibit A), the Office has calculated a period of Applicant Delay of 104 days.

C. "Calculation of Correct Patent Term Adjustment Pursuant to 37 CFR 1.702(f)


As set forth in 37 CFR 1.703(f), Applicants are entitled to a period of patent term adjustment equal to the period of examination delays reduced by the period of Applicant Delay. Therefore, Applicants submit that the correct patent term adjustment for the above-referenced application is at least 675 days, which is the difference between the total period of examination delay (779 days) less the period of Applicant Delay (104 days).

4. In accordance with 37 CFR 1.705(b)(2)(iii), Applicants submit that the pending patent corresponding to this application is not subject to a terminal disclaimer.

In view of the foregoing, it is respectfully requested that this Application for Patent Term Adjustment be favorable considered and that a corrected Determination of Patent Term Adjustment be issued to reflect a minimum patent term adjustment of 675 days.

Respectfully submitted,
BANNER & WITCOFF, LTD.

Dated: June 16, 2009

By: 
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